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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN CHRISTOPHER DIXON,

Defendant and Appellant.

F057961

(Super. Ct. No. BF118343B)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Louis P. Etcheverry, Judge.

Elizabeth Campbell, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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*Before Gomes, A.P.J., Dawson, J., and Kane, J.

On October 5, 2006, at approximately 9:00 a.m., Bakersfield police officers heard gunshots near the intersection of Donna Avenue and 1st Street and saw a car fleeing from the area. As the officers chased the car, it stopped and Evan Wells got out. When confronted by officers, Wells took a gun out of his sweatshirt pocket and stated, “They gave me the gun and told me to run.”

During a post-arrest interview, Wells identified the other occupants of the car as Brian Brookfield, Anthony Ford, and appellant, Kevin Dixon. According to Wells, Brookfield picked up everyone and drove to a location where Brookfield, Ford, and Dixon got out and left Wells in the car. A few minutes later, Wells heard gunshots and saw the three men run back to the car. After leaving the area and seeing a police car following them, Dixon gave Wells a handgun and told him to hold it or he would shoot Wells. Dixon then told Brookfield to stop and Wells was let out of the car.

Meanwhile officers found Kisasi Baltrip driving his vehicle with a gunshot wound to his chest. Baltrip was transported to Kern Medical Center where he later died.

Police interviewed numerous witnesses at the shooting scene including one who reported seeing Dixon, Brookfield, and Ford walking in the middle of the street, hearing several shots, and turning to see the three men firing handguns at the victim’s vehicle.

Dixon, Brookfield, and Ford were arrested later that day.

On March 14, 2007, the district attorney filed an indictment charging the four defendants with premeditated murder (count 1/Pen. Code, § 187, subd. (a)),¹ conspiracy to commit murder (count 2/§§ 182, subd. (a)(1) & 187, subd. (a)), discharging a firearm at an occupied vehicle (count 3/§ 246), and actively participating in a criminal street gang (count 4/§ 186.22, subd. (a)). All counts alleged that a principal personally used a

¹ All further statutory references are to the Penal Code.

firearm within the meaning of section 12022, subdivisions (d) and (e)(1). Counts 1, 2, and 3 also alleged a gang enhancement (§ 186.22, subd. (b)(4)).

On February 5, 2009, the court granted the prosecution's motion to amend the indictment to charge the gang enhancement pursuant to section 186.22, subdivision (b)(1) instead of section 186.22, subdivision (b)(4).

On March 30, 2009, the prosecutor amended count 1 to allege second degree murder (§ 187, subd. (a)(2)) and a personal use of a firearm enhancement pursuant to section 12022.53, subdivision (b). Dixon then pled no contest to count 1 as amended, count 3, and count 4, and admitted the amended arming enhancement in count 1 in exchange for the dismissal of the remaining count and allegations and a stipulated term of 25 years to life.

On April 24, 2009, the court sentenced Dixon to the stipulated sentence of 25 years to life as follows: 15 years to life on his second degree murder conviction, a 10-year arming enhancement, and concurrent terms on each of his remaining convictions. The court awarded Dixon 933 days of presentence actual custody credit against the term it imposed on Dixon's murder conviction.

Dixon's appellate counsel has filed a brief which summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende* (1979) 25 Cal.3d 436.) However, in a letter filed on November 6, 2009, Dixon contends: 1) he was not given any transcripts relating to his case until a year after he was arrested; 2) his attorney only met with him right before trial; 3) he was denied his right to a speedy trial; 4) in entering his plea he assumed he would be sentenced to 25 years, not 25 years to life; and 5) his attorney dissuaded him from moving to withdraw his plea on the date of sentencing. We will reject these contentions.

“... ‘Issues cognizable on an appeal following a guilty plea are limited to issues based on “reasonable, constitutional, jurisdictional, or other grounds going to the legality of the proceedings” resulting in the plea.

(Pen. Code, § 1237.5.) The reason for this rule is that “a plea of guilty admits all matters essential to the conviction.” [Citation.] Obtaining a certificate of probable cause does not make cognizable those issues which have been waived by a plea of guilty. [Citation.] Therefore, section 1237.5 of the Penal Code does not expand the grounds upon which an appeal may be taken after a guilty plea, but “merely establishes a procedure for screening out frivolous claims among these issues which have not been waived.” [Citation.] . . . [Thus,] [a]lthough the constitutional right to speedy trial is fundamental [citation], we conclude that a defendant may not raise the issue on appeal after he has pleaded guilty.’ [Citation.] . . . ‘The essence of a defendant’s speedy trial or due process claim in the usual case is that the passage of time has frustrated his ability to establish his innocence. The resolution of a speedy trial or due process issue necessitates a careful assessment of the particular facts of a case in order that the question of prejudice be determined. [¶] Where the defendant pleads guilty, there are no facts to be assessed. And since a plea of guilty admits every element of the offense charged, there is no innocence to be established.’ [Citation.]” (*People v. Lee* (1980) 100 Cal.App.3d 715, 717.)

Thus, we conclude that Dixon’s claim that he was denied a speedy trial is not cognizable on appeal.

Dixon’s other contentions are not reviewable on appeal because they require consideration of matters outside the record. (*Polanski v. Superior Court* (2009) 180 Cal.App.4th 507, 543.) Nevertheless, our review of the record disclosed that the court erred by not awarding Dixon presentence custody credit against each of the concurrent terms it imposed on his convictions in counts 3 and 4. (*People v. Schuler* (1977) 76 Cal.App.3d 324, 330 [where defendant is held in custody on a number of charges and upon conviction is ordered to serve concurrent sentences, all days of custody shall be credited upon his sentence must be credited to each of them].) Accordingly, we will order the trial court to issue a corrected abstract of judgment that rectifies this error.

Following independent review of the record, we find that with the exception of the credits issue discussed above, no other reasonably arguable factual or legal issues exist.

DISPOSITION

The judgment is modified to award Dixon presentence custody credit of 933 days against each of the concurrent terms imposed in counts 3 and 4. The trial court is directed to file an amended abstract of judgment consistent with this opinion and to forward a certified copy to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.